

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FURLONG, INCORPORATED

and

Case 36--CA--3993

CULINARY ALLIANCE & BARTENDERS  
UNION, LOCAL #425, HOTEL EMPLOYEES  
& RESTAURANT EMPLOYEES INTERNATIONAL  
UNION, AFL--CIO

DECISION AND ORDER

Upon a charge filed on October 1, 1981, by Culinary Alliance & Bartenders Union, Local #425, Hotel Employees & Restaurant Employees International Union, AFL--CIO, herein called the Union, and duly served on Furlong, Incorporated, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 19, issued a complaint on November 9, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that a bargaining unit consisting of all

Respondent's employees except clerical employees, guards, and supervisors as defined in the Act constitutes an appropriate unit for bargaining. At all times material herein, and continuing to date, a majority of the employees in the above-described appropriate unit have designated the Union to represent them for the purposes of collective bargaining and, under Section 9(a) of the Act, the Union has been, and is now, the exclusive representative of all employees in said unit. The complaint further alleges that on August 10, 1979, Respondent and the Union entered into a collective-bargaining agreement covering terms and conditions of employment of employees in the bargaining unit referred to above. This collective agreement was to expire on June 1, 1982. The complaint alleges in essence that on or about April 1, 1981, Respondent abrogated its agreement with the Union by ceasing to make required monetary contributions to the health and welfare trust fund as prescribed in the contract. On November 16, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint. Subsequently, on June 8, 1982, Respondent filed an amended answer, admitting all the allegations of the complaint.

On June 21, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on June 25, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. No response was filed.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides, in part, as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

Section 102.23 of the Board's Rules and Regulations, Series 8, as amended, provides that "[t]he respondent may amend his answer at any time prior to the hearing."

The record in this case indicates that Respondent, by its amended answer, admits each and every factual allegation contained in the complaint, as well as the legal conclusions drawn therefrom, to wit: that Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally ceasing to comply with the terms and conditions of its collective-bargaining agreement with the Union by failing to make the required contributions to the health and welfare trust fund. There being no dispute as to the

allegations of the complaint, all said allegations are found to be true.

On the basis of the entire record, the Board makes the following:

### Findings of Fact

#### I. The Business of Respondent

Respondent, a Washington corporation, is engaged in the retail restaurant business, maintaining its principal office and place of business in Vancouver, Washington. During the last complete fiscal year ending prior to November 9, 1981, Respondent derived gross revenues in excess of \$500,000 and purchased and received at its Vancouver, Washington, location goods valued in excess of \$10,000 directly from points outside the State of Washington.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

#### II. The Labor Organization Involved

Culinary Alliance & Bartenders Union, Local #425, Hotel Employees & Restaurant Employees International Union, AFL--CIO, herein called the Union, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

## III. The Unfair Labor Practices

The Union is now and has been at all times material herein the exclusive representative of all Respondent's employees (excluding clerical employees and guards and supervisors as defined in the Act) for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. Respondent and the Union entered into a collective-bargaining agreement on August 10, 1979, which by its terms expired on June 1, 1982.

Since on or about April 1, 1981, Respondent has failed to comply with the terms of a collective-bargaining agreement between itself and the Union by unilaterally ceasing to make monetary contributions to the health and welfare trust fund as required under the contract. These contributions constitute terms and conditions of employment which are mandatory subjects of bargaining.

Accordingly, we find that Respondent has, since April 1, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

#### IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent refused and continues to refuse to honor the terms of its collective-bargaining agreement with the Union, including the health and welfare trust provisions requiring Respondent to make certain monetary contributions to the trust fund, we shall order Respondent to make whole its employees by transmitting the required contributions to the trust fund retroactive to April 1, 1981.<sup>1</sup>

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<sup>1</sup> Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question of whether Respondent must pay any additional amounts into the benefit funds in order to satisfy our "'make-whole'" remedy. See Merryweather Optical Company, 240 NLRB 1213 (1979).

## Conclusions of Law

1. The Respondent, Furlong, Incorporated, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Culinary Alliance & Bartenders Union, Local #425, Hotel Employees & Restaurant Employees International Union, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By the acts and conduct described in section III, Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Furlong, Incorporated, Vancouver, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to make required contributions to the health and welfare trust fund as required by the terms of its collective-bargaining agreement between it and the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make whole its employees, in the manner set forth in the section of this Decision entitled "'The Remedy,'" for Respondent's unlawful failure to transmit the contributions to the Union's health and welfare trust fund, retroactive to April 1, 1981, as required by its collective-bargaining agreement with the Union.

(b) Post at its premises in Vancouver, Washington, copies of the attached notice marked "'Appendix.'" <sup>2</sup> Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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<sup>2</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"



(c) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C.

August 12, 1982

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Howard Jenkins, Jr.,           Member

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Don A. Zimmerman,           Member

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Robert P. Hunter,           Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

## APPENDIX

## NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

WE WILL NOT refuse to make monetary contributions to the health and welfare trust fund as required by the terms of the collective-bargaining agreement between ourselves and the Culinary Alliance & Bartenders Union, Local #425, Hotel Employees & Restaurant Employees International Union, AFL--CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole our employees by making the appropriate monetary contributions to the health and welfare trust fund, retroactive to April 1, 1981.

FURLONG, INCORPORATED

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(Employer)

Dated ----- By -----  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 2948, 915 Second Avenue, Seattle, Washington 98174, Telephone 206--442--7472.